

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

DAVID WAYNE BIGGS,

Plaintiff,

vs.

ROCK-TENN COMPANY

Defendant.

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Civil Action No. \_\_\_\_\_

**DEFENDANT ROCK-TENN COMPANY LLC'S  
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to the terms and provisions of 28 U.S.C. §§ 1441 and 1446 and Local Rule 81 of the United States District Court for the Northern District of Texas, Rock-Tenn Company, through its attorneys Kyle H. Dreyer and Aaron J. Burke, removes this civil action from the County Court at Law No. 4, Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division. This action may be removed because this Court has original jurisdiction under 28 U.S.C. § 1332, based on the complete diversity of citizenship of the parties and the amount in controversy exceeds \$75,000. In support, Rock-Tenn Company states the following:

**I.  
BASIS FOR REMOVAL – DIVERSITY JURISDICTION**

This Notice of Removal is filed on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332. Diversity jurisdiction exists as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship exists between Plaintiff and Defendant.

**II.**  
**CITIZENSHIP OF PLAINTIFF**

According to Plaintiff's Original Petition, Plaintiff David Wayne Biggs resides and is a citizen of the State of Texas.<sup>1</sup>

**III.**  
**CITIZENSHIP OF DEFENDANT**

Defendant Rock-Tenn Company, at the time of the initial filing of this action and at the current time of the removal of this action, is a corporation organized under the laws of Georgia with its principal place of business in Gwinnett County, Georgia.

Thus, Rock-Tenn Company is a citizen of the state of Georgia, and complete diversity between Plaintiff and Defendant exists.

**IV.**  
**VENUE**

The Dallas Division of the Northern District of Texas is the United States district and division embracing Dallas County, Texas, the county in which the State Court Action was filed and is pending. *See* 28 U.S.C. § 124(b)(2). Therefore, venue of this removed action is proper in this Court.

**V.**  
**AMOUNT IN CONTROVERSY**

This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. The amount in controversy is in excess of \$75,000, exclusive of interest and costs. On the face of Plaintiff's Original Petition, Plaintiff "states monetary relief over \$200,000 but not

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<sup>1</sup> *See* Plaintiff's Original Petition, attached as **Exhibit C**, at ¶ 2.1.

more than \$1,000,000, in such amount to be determined by the jury, is being sought.”<sup>2</sup> Plaintiff seeks damages for past and future: medical expenses, lost earnings, physical pain and mental anguish, travel expenses, physical impairment, and disfigurement.<sup>3</sup>

## **VI. CONSENT**

At the time of filing this Removal, Defendant Rock-Tenn Company is the only Defendant, has been served with citation, and has filed an answer in this suit. There are no other defendants in this matter and therefore, further consent for removal is not required.

## **VII. NATURE OF CASE**

This single-vehicle accident arises out of a crash alleged to have occurred on April 20, 2013 in Fort Worth, Texas.<sup>4</sup> Plaintiff David Biggs was driving a tractor-trailer, when according to Plaintiff’s Original Petition, his vehicle rolled onto its side.<sup>5</sup> Biggs alleges he sustained injuries as a result thereof.<sup>6</sup> Biggs claims “upon information and belief, the unknown individual(s) responsible for loading and securing the paper was/were an employee(s), independent contractor(s) and/or agent(s)/representative(s) of Rock-Tenn.”<sup>7</sup>

Plaintiff subsequently filed his Original Petition on February 2, 2015 against Rock-Tenn Company. Plaintiff asserts claims for negligence and *respondeat superior*.<sup>8</sup>

## **VIII. JURY DEMAND**

Rock-Tenn Company hereby respectfully demands that a jury be empaneled to try the facts and issues of this cause. Plaintiff, likewise, made a demand for a trial by jury in his

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<sup>2</sup> Exh. C, Plaintiff’s Original Petition at ¶ 11.1.

<sup>3</sup> *Id.* at ¶¶ 7.1 – 10.1.

<sup>4</sup> *See* Exh. C, Plaintiff’s Original Petition at ¶ 5.1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at ¶ 5.3.

<sup>8</sup> *Id.* at ¶¶ 6.2 – 6.3.

Original Petition.

**IX.  
REMOVAL IS TIMELY**

Rock-Tenn Company timely files this Notice of Removal of Action pursuant to 28 U.S.C. § 1446(b). Specifically, Plaintiff filed suit on February 2, 2015.<sup>9</sup> Rock-Tenn Company was served on February 23, 2015. This Removal is filed within thirty days of service of both the Citation and Petition.<sup>10</sup> See 28 U.S.C. § 1446(b). Removal is therefore timely.

**X.  
NOTICE TO THE STATE COURT**

Defendant Rock-Tenn Company has filed with the Clerk of the County Court at Law No. 4 of Dallas County, Texas, a Notice of Removal simultaneously with/or immediately after the filing of this Notice.

**XI.  
STATE COURT PLEADINGS PROVIDED**

Pursuant to Local Rule 81 and 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by copies of the following:

- a. an index of all documents that clearly identifies each document and indicates the date the document was filed in state court, attached hereto as **Exhibit A**;
- b. copy of the docket sheet in the state court action, attached hereto as **Exhibit B**;
- c. each document filed in the state court action, except discovery material (if filed on paper, each document must be individually tabbed and arranged in chronological order according to the state court file date; if filed by electronic means, each document must be filed as a separate attachment), attached hereto as **Exhibits C - E**; and
- d. a separately signed certificate of interested persons that complies with LR 3.1(c) or 3.2(e), attached hereto as **Exhibit F**.

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<sup>9</sup> *Id.* at p. 1.

<sup>10</sup> See Citation Issued on Rock-Tenn Company, attached as **Exhibit D**.

**WHEREFORE, PREMISES CONSIDERED,** Defendant Rock-Tenn Company respectfully prays that this Notice of Removal of Action be filed; that the civil action pending in the County Court at Law No. 4 in Dallas County, Texas, Cause No. CC-15-00537-D, be removed to and proceed in the United States District Court for the Northern District of Texas, Dallas Division; and for any further relief, both at law or in equity, to which Rock-Tenn Company may show itself to be justly entitled.

Respectfully submitted,

*/s/ Aaron J. Burke*

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**ATTORNEYS FOR DEFENDANT  
ROCK-TENN COMPANY**

**CERTIFICATE OF SERVICE**

On March 25, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Aaron J. Burke